IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Appeal No. 768/2001 Decided on 24.8.04

Cantonment Board Lansdowne

Versus

Smt. Kamlesh Arora & another

Not approved for reporting

Date 24.8.04 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Appeal No. 768 of 2001
(Old No. 1945 of 1984)

Cantonment Board Lansdowne
District Pauri Garhwal ……..Appellant-Complainant

Versus

1. Smt. Kamlesh Arora
   W/o Avinash Arora
2. State …….Respondents-accused

Hon'ble J.C.S. Rawat, J.

This criminal appeal under section 378 of the Code of Criminal Procedure (for short 'Code') was preferred against the judgment and order dated 29.4.1982 passed by the Munsif Magistrate in criminal case No. 53/1981, whereby the respondent-accused was acquitted of the charge under section 179/184 Cantonment Board Act. Leave to appeal was granted on 23.7.1984.

2. Brief facts of the case are that the accused-respondent without the previous sanction of the Board as required under section 179 of the Cantonment Board Act (for short 'Act') has made material alteration in her house No.199/76 at Sadar Bazar within the limits of Lansdowne Cantonment Board. A notice was also sent to the accused-respondent not to carry on the said alterations but the same was not obeyed. The appellant filed a complaint under section 179/184 of the Act before the learned trial court. The accused-respondent appeared in response of the summons sent to her and admitted that the alterations were made by her but the same are not material alterations and as such she has not committed any offence punishable under section 184 of the Act.

3. The complainant in support of its case examined Dalbir Singh Rautala as PW-1, who was the Office Superintendent in the Cantonment Board Lansdowne and he also produced a copy of the notice sent by the Board to the accused-respondent. He also stated that Balbir Singh former Overseer of the Board, who submitted its report about the alteration made by the accused-respondent in her house, could not be examined as he has already left the service of the Board and as such Dalbir Singh Rautala (PW-1) has proved the report of Balbir Singh former Overseer of the Board.

4. Thereafter, the accused-respondent stated in her statement that she has not made any new construction and she only made some repairs in her dilapidated house. She also adduced the evidence of her husband-Avinash Arora (DW-1) who stated that he purchased the house in the year 1978. Since the house was in a dilapidated condition hence he made some repairs of the house. He had also stated that in the ground floor there was stone built staircase and he replaced it by cemented staircase. He further stated that there was a wooden staircase and it was replaced by cemented staircase. There were stone built pillars in a dilapidated condition and he replaced it by cemented pillars. He also replaced the dilapidated stone built wall by the cemented wall. He did not alter the height of the building. He has replaced the tin-sheets into a R.C.C. slab. Further he had stated that he had not made material alteration in the building. He further alleged that the matter had been compounded by the Board and he had already paid the compounding fees to the Board.

5. The learned Munsif Magistrate on his appreciation of the evidence on record held that the prosecution could not prove its case under section 179/184 Cantonment Board Act against the respondent-accused and she was acquitted of the charge levelled against her.

6. I have heard Sri Rajendra Dobhal learned counsel for the appellant and Sri Raman Kumar Shah learned counsel for the respondent-accused. I have also gone through the evidence and material on record.

7. At the outset, I would like to mention that the record was summoned from the court of the Magistrate. It has been reported by the CJM that some of the portions of the file has been weeded out according to the provisions of the General Rule Criminal but the remaining portion which contains the statement of the witnesses as well as the statement of the accused-respondent, judgment, ordersheet and exhibits have been sent to this court. The appeal was disposed of on the basis of the available record.

8. The prosecution has adduced the evidence of Dalvir Singh Rautala (PW-1) who happens to be the office superintendent of the Cantonment Board and he stated that that Balbir Singh former Overseer of the Board who visited the spot had retired from the service. Dalvir Singh Rautala (PW-1) had not visited the spot and he cannot reveal any fact with regard

to the condition of the building at the time of inspection. Whereas the evidence of Avinash Arora (DW-1) is concerned, he has clearly stated that he had not made any new construction. The building was in a dilapidated condition and he merely repaired and replaced the staircase, roof and the kitchen and he had not made any material alteration in the said building. Perusal of the record it is revealed that the prosecution had not adduced the evidence of Balbir Singh former Overseer of the Board who could speak the real facts with regard to the alterations made by the accused-respondent. The evidence of Avinash Arora (DW-1) was cogent and credible. Now, it has established by the evidence of both the parties that the accused-respondent made certain alteration in the building. I have to see whether these alterations comes within the meaning of 179 of the Act, which is punishable under section 179/184 of the Act. The section so far as it is relevant for this case reads as under:-

"179(1) Whoever intends to erect or re-erect any building in a cantonment shall apply for sanction by giving notice in writing of his intention to the Board.

(2) For the purposes of this Act, a person shall be deemed to erect or re-erect a building who-

(a) *makes any material alteration or enlargement of any building, or*

(b) *……..*

(c) *……..*

(d) *……..*

(e) *……..*

(f) *……..*

(g) *makes any alteration to any building which increases or diminishes the height of, or area covered by, or the cubic capacity of, the building, or which reduces the cubic capacity of any room in the building below the minimum prescribed by any bye-law made under the Act.*

9. The provisions of section 179 of the Act with which I am concerned, a person shall be deemed to erect or re-erect a building if he makes any material alteration or enlargement of any building. Now so far as the instant case is concerned, it is not a case of erection or re-

erection of a building. The only point for my consideration is whether there has been any material alteration or enlargement in building which would, under the deeming clause, amount to erection or re-erection of a building. There is absolutely no evidence of any increase in height or the area or the cubic capacity or even decrease of the cubic capacity below the minimum prescribed by any bye-law. It is true that any replacing the roof with RCC slab or replacing the tin-sheets, constructing the cemented wall of the kitchen with bricks walls by replacing stone building wall. These alterations have been made only to add to the comforts and safety of the accused-respondent particularly when the building was in a dilapidated condition.

10. The case of the accused-respondent is squarely covered by the judgment in **Ram Swaroop Gupta Vs. Cantonment Board Lucknow A.I.R. 1961 Allahabad p/263.**

11. In view of the foregoing discussion, I am of the view that the said alterations are not material alteration which attracts the provisions of section 179 of the Act. Therefore, the judgment and order dated 29.4.1982 passed by the Munsif Magistrate was based on fair and proper appraisal of the material on record. Considering this, the appeal preferred by the Cantonment Board against the respondent is liable to be dismissed. The leave to appeal is accordingly dismissed.

(J. C. S. Rawat, J.)

Dated 24.8.2004

LSR